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TUPE transfers and pension protection

New requirements were introduced last April imposing a minimum level of pension benefits which must be provided to employees following a transfer of employment to which TUPE applies.

The TUPE regulations were changed to require employers (the new employer) to provide a certain level of pension provision to some employees who transfer to them from their previous employer under the TUPE regulations on or after 6th April 2005.

If the previous employer provides a defined benefit (final salary) occupational scheme, transferring employees will be covered by the new regulations if, at the time of the transfer, they were:

- An active member of the scheme
- Eligible to be an active member
- In a waiting period at the end of which they would have been eligible to be an active member.

If the previous employer provides a money purchase occupational scheme, transferring employees will be covered by the new regulations if, at the time of the transfer, they were:

- An active member of that scheme and the employer was required to make contributions to the scheme in respect of the employee, or was not required to make such contributions but had done so
- Eligible to be an active member of that scheme
- In a waiting period following the end of which they would have been eligible to be an active member of that scheme.

The new employer can offer one of the following types of pension arrangement to the eligible transferring employees:

Defined benefit occupational pension scheme:

- Benefits which meet the reference scheme test requirements, or
- Benefits with a value at least equal to 6% of the employee's pensionable pay for each year of employment. If employees are required to contribute to the scheme, their level of compulsory contributions must

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TUPE transfers and pension protection

This document contains brief general guidance on complex topics. Take specialist advice on particular situations before action.

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not be more than 6% of pensionable pay.

Money purchase occupational pension scheme or Stakeholder scheme:

- The new employer will only have to make contributions for an eligible transferring employee if the employee also makes contributions
- If the employee makes contributions the new employer must match these, up to a maximum of 6% of the employee's basic pay.

At any time after the employee has transferred to the employment of the new employer, both can agree to opt out of the new requirements.

Summary

This is a complex area and the above is only a brief overview of the new regulations. Employers who are affected are encouraged to seek professional advice to ensure they fully comply. This could also be an opportunity for employers to review the level and types of benefit they offer all employees, particularly if through acquisition of other businesses they have groups of employers with varying entitlements, in terms of pensions, death in service benefits, income protection and private medical insurance.

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Irenicon Limited offer an initial 20 minutes free advice - telephone 08452 303050 for your free 20 minute call with one of our consultants.

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